

CRIMINAL REVISION.

Before Mr. Justice Batchelor and Mr. Justice Shah.

EMPEROR *v.* RANCHODLAL AMRATLAL.*

1917.

March 26.

Bombay District Municipalities Act (Bombay Act III of 1901), section 3, clause (7)†—'Building', interpretation of—Wire-fence is not a building.

The term "building" as defined in section 3, clause (7) of the Bombay District Municipalities Act, 1901, does not include an ordinary wire-fence.

THIS was a reference made by B. C. Kennedy, Sessions Judge of Ahmedabad.

The accused was tried for an offence punishable under section 96, clause (5) of the Bombay District Municipalities Act, 1901, in that he put up an ordinary wire-fence on his own land without permission of the Municipality. He was found guilty of the offence charged, and sentenced to pay a fine of Rs. 51, and was ordered to pay one anna for process fees under section 31, clause 3 of the Court Fees Act, 1870.

The accused applied to the Sessions Judge of Ahmedabad. The learned Judge being of opinion that the wire-fence was not a building within the meaning of the term as defined in section 3, clause (7) of the Bombay District Municipalities Act, 1901, referred the case to the High Court.

The reference was heard.

T. R. Desai, for the accused :—The wire-fence cannot be a building either in the ordinary sense of the

* Criminal Reference No. 3 of 1917.

† The clause runs as follows :—

(7) "Building" shall include any hut, shed, or other enclosure, whether used as a human dwelling or otherwise, and shall include also walls, verandahs, fixed platforms, plinths, door-steps, and the like.

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term or as defined in the Act. In ordinary parlance, building does not mean a wire-fence : see Murray's Dictionary ; Webster's Dictionary ; Stroud's Judicial Dictionary. The term as defined in the Act does not include a fence under the definition of the term in the former Act : it was held that a *karvi* (reed fence) is not a building : *Queen-Empress v. Janardhan*⁽¹⁾ ; nor was a wattle-fence a building : *In Re Salomibai*⁽²⁾.

N. K. Mehta, for the Municipality :—I submit the term “building” should be interpreted in a comprehensive sense. The wire-fence rests on posts that are sunk into the ground : it is thus something more than a hedge or a reed fence. It is more permanent in its character. It certainly is an enclosure and does not much differ from a compound wall.

BATCHELOR, J. :—The question before us in this reference from the learned Sessions Judge of Ahmedabad is whether an ordinary wire-fence is a building within the meaning of clause (7) of section 3 of the District Municipalities Act of 1901.

There is not much authority to guide us, but it has been held in this Court that a ‘*karvi*’ or reed fencing is not a building within the meaning of that word as used in section 33 of the Act of 1873 : see *Queen-Empress v. Janardhan*⁽¹⁾. Under the same Act this Court has also held that a mere wattle-fence was also outside the definition of building : see *In Re Salomibai*⁽²⁾. It appears, therefore, that consistently with the rulings the wire-fence now before us should be regarded as outside the provisions of clause (7) of the present section 3. That is confirmed by the definition of the word “building” in Webster's Dictionary, where it is expressly mentioned that in the popular acceptation of

(1) (1880) Ratanlal's Cri. Cas. 145.

(2) (1888) Ratanlal's Cri. Cas. 428.

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the word it would not include a mere wall or fence. It is no doubt true to say that by the special provisions of clause (7) a wall is to be included within the word 'building'. But it is so included by reason of the special words importing its inclusion. There are no such special words to sweep in a fence which is therefore in my opinion outside the definition. But then Mr. Mehta contended that even if the fence could not be brought inside the definition as being a species of wall, yet it ought to be held to fall within the definition as being an enclosure. Now here the clause reads that 'building' shall include any hut, shed or other enclosure, and, looking to the wideness of these words and to the context, I am of opinion that the enclosure referred to must be interpreted as *ejusdem generis* with the preceding words 'hut' and 'shed,' that is to say, must be taken to refer to some fabric or structure or thing built in the more popular acceptance of the word. In that view it appears to me that the wire-fence is as much outside the word 'enclosure' as outside the word 'wall.' Any educated Englishman would, I think, feel that it was a misuse of language to speak of a wire-fence as a 'building.'

The conviction, therefore, must be set aside, the accused acquitted and discharged and the fine, if paid by him, must be refunded to him. He must also be reimbursed the process fees which he has paid under section 31, clause (3) of Act VII of 1870.

SHAH, J.:—I agree.

Conviction set aside.

R. R.